

# **PERSONNEL RULES & REGULATIONS MANUAL**

## **SECTION 1100 EMPLOYEE CONDUCT**

### **Section 1101. City Identification & Security Standards**

#### **1101.1 Purpose**

To enhance the City's mission of providing high quality public service; to provide standards and requirements for the issuance and display of identification; to provide a consistent method of identification; to provide an additional means of establishing a safe workplace for employees; to provide a safe environment for the public to conduct business.

#### **1101.2 Scope**

This policy applies to all employees of the City of Gaithersburg while on City property and/or while conducting City business in the community; and to all visitors to City facilities or properties.

#### **1101.3 Exceptions**

Exceptions to this policy may be requested in writing by the Department Head and must be approved by the City Manager or his/her designee.

#### **1101.4 Policy**

It is the policy of the City of Gaithersburg that employees and the public be provided with the highest quality public service in the safest possible environment while conducting business. All persons working or conducting business on City property and/or in the community will adhere to these identification and security standards.

#### **1101.5 Procedure**

##### **a. Employee Identification Badge**

##### **1. Issuance**

(a) The Human Resources Department will issue employee identification badges to all incumbent employees upon initial implementation of this policy (2009). Following policy implementation, new employees will be issued an identification badge on or about the employee's hire date.

(b) Badges are the property of the City of Gaithersburg; and employees are responsible for safeguarding the badge issued to them at all times.

(c) Employees may not loan their badge to any other person nor shall they attempt to use an identification badge not assigned to them for any purpose.

(d) Identification badges of all City employees may be updated/reissued on regular intervals as determined by the City Manager or his/her designee.

(e) The Human Resources Department will maintain a master list of all employees to whom identification badges are issued.

##### **2. Display**

(a) All City employees (as outlined in this policy) must be prepared to present their identification badge upon request at all times. Employees are encouraged to wear their identification badges while on City property or in a City facility, and/or while conducting City business in the community, except when wearing the identification badge presents a safety issue due to the nature of the work being performed.

(b) The Department Head has the authority to require some or all employees in his/her Department to wear their identification badges while on City property, in a City facility, and/or while conducting City business in the community. Any employee required to wear his/her identification badge shall be notified in writing by the Department Head; notification shall include guidelines indicating when the badge is required to be worn.

(c) When wearing the identification badge it should be worn in a location of the employee's choosing, preferably at waist level or above so the employee identification photo side of the badge is clearly visible to others at all times. The City will provide a clip or lanyard for each employee to wear the identification badge.

(d) The identification badge must be kept free of decoration and may not be defaced or altered with pins, stickers, decals, etc.

### **3. Replacement**

#### **(a) Temporary Replacement**

(1) An employee who reports to work without his/her identification badge must immediately advise his/her supervisor or Department Head and request issuance of a temporary identification badge.

(2) The temporary identification badge will be issued by the Human Resources Director or his/her designee. The badge will be date-stamped and issued for no more than two consecutive business days.

(3) The employee must produce his/her permanent identification badge prior to the expiration of the temporary badge and return the temporary badge to the Human Resources Director or his/her designee.

(4) If the employee cannot produce his/her permanent identification badge prior to the expiration of the temporary badge, he/she must follow the procedure to replace the badge as outlined in subsection (b).

(5) An employee who requests a temporary replacement identification badge more than two (2) times in a calendar year may be subject to disciplinary action.

#### **(b) Replacement of Lost/Stolen/Destroyed Badge**

(1) An employee whose identification badge is lost, stolen, or destroyed must advise his/her supervisor or Department Head as soon as he/she becomes aware of the loss.

(2) An employee will be allowed one (1) free replacement within any 36 month period. Thereafter, the employee will be charged \$10.00 for a replacement identification badge and \$5.00 for a clip or lanyard. There will be no charge for issuance of a new badge due to name change or department transfer.

(3) The employee must contact the Human Resources Department to schedule an appointment to have his/her identification badge replaced.

### **4. Surrender**

(a) Each Department is responsible for ensuring that, as part of the employee termination procedure, the identification badge is collected prior to the issuance of a final paycheck.

(b) The Department Head or his/her designee shall collect the identification badge and clip/lanyard from an employee terminating from City service and immediately forward them to the Human Resources Department. The identification badge must be surrendered if:

(1) The employee is permanently terminated from City service, voluntarily or involuntarily.

(2) The employee is suspended or placed on leave due to disciplinary action.

(3) The employee is on a voluntary or involuntary extended period of absence or administrative leave, paid or unpaid.

(c) The badge need not be surrendered if an employee is on an extended period (more than 30 days) of absence due to family medical leave, professional or military training, or jury service.

#### **5. Disciplinary Action/Penalties**

(a) Improper use of an employee identification badge, or failure to comply with this policy, will result in disciplinary action as set forth in the City's Personnel Ordinance.

(b) Failure to surrender the employee identification badge at the time of termination or other absence as set forth in this policy will result in a \$250 fine to be deducted from the employee's paycheck or other legal action as deemed appropriate.

#### **b. Security Access Rights**

Department Heads will designate those employees who are granted security access rights and therefore authorized to use their identification badge to enter or access City facilities or secure work areas. Designation will be based on need (for example, employees responsible for opening facility, employees who work outside a facility's normal hours of operation, etc.).

#### **c. Unauthorized Persons**

An employee who observes any unauthorized individual (employee or visitor) in a secure work area should, at their discretion:

1. Immediately report the person to a supervisor or Department Head; or
2. Initiate a request for emergency assistance (9-1-1).

### **Section 1102. Discrimination and Harassment**

#### **1102.1 Purpose**

The City of Gaithersburg is committed to providing a work environment in which all individuals are treated with respect and dignity. The City believes that all employees are entitled to a workplace free of discrimination and harassment, including sexual harassment; and expects employees to treat each other and its customers with courtesy and respect. No person should be required to endure discrimination or harassment by supervisors or coworkers or work in a hostile environment as a condition of employment.

The purpose of this policy is to make it clear that the City strictly prohibits any form of unlawful discrimination or harassment in the workplace and to establish procedures for reporting behavior prohibited by the law and this policy.

#### **1102.2 Policy**

Unlawful discrimination/harassment undermines the integrity of the employment relationship, compromises equal employment opportunity, debilitates morale, and interferes with work productivity. The City does not tolerate any form of unlawful discrimination or harassment on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, disability, marital or parental status, political opinions or affiliations, or lawful employee organization activities in City employment, City operated programs, services or facilities.

### **1102.3 Applicability**

This policy applies to all employees of the City of Gaithersburg. Conduct prohibited by this policy is unacceptable in the workplace and in any location that can be reasonably regarded as an extension of the workplace, including but not limited to business trips, any off-site business-related social function, or any facility where City business is being conducted and discussed.

### **1102.4 Examples of Prohibited Conduct**

Discrimination and harassment may take many forms, including but not limited to:

a. **Discrimination**

Personnel decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, disability, marital or parental status, political opinions or affiliations, or lawful employee organization activities; denying employment opportunities to a person because of marriage to, or association with, an individual on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, disability, marital or parental status, political opinions or affiliations, or lawful employee organization activities.

b. **Verbal Harassment**

Use of epithets, innuendos, threats, derogatory comments or references, slurs or jokes, gestures, pranks, teasing, or other banter, including negative stereotyping, on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, disability, marital or parental status, political opinions or affiliations, or lawful employee organization activities. Verbal harassment may also include sexual remarks or well-intentioned compliments about a person's clothing, body, or sexual activities.

c. **Physical Harassment**

Assault, unwelcome or hostile touching or contact, intimidation, impeding or blocking movement, and/or any physical interference with normal work or movement when directed at an individual on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, disability, marital or parental status, political opinions or affiliations, or lawful employee organization activities.

d. **Visual Forms of Harassment**

Displaying or distributing written or graphic material in the workplace that is derogatory, demeaning, or displays hostility on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, disability, marital or parental status, political opinions or affiliations, or lawful employee organization activities, including but not limited to jokes, posters, notices, bulletins, magazines, cartoons, drawings, advertisements, videos, Internet sites, or other electronic media.

e. **Sexual Favors**

Unwelcome sexual advances, expectations, propositions, requests, demands, or pressure for sexual favors, and other verbal or physical conduct of a sexual nature which are implicitly or explicitly a term or condition of an employee's employment, are used as the basis of employment decisions, or affect or interfere with the employee's work performance.

f. **Hostile Environment**

Conduct including the above-referenced behavior(s) that has the purpose or effect of creating an intimidating, hostile, or offensive work environment on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, disability, marital or parental status, political opinions or affiliations, or lawful employee organization activities.

## **1102.5 Responsibilities and Expectations**

### **a. City Manager**

The City Manager shall be responsible for assigning responsibility and accountability for implementation of the City's discrimination and harassment policy and procedures. He/She shall take all steps necessary to set a positive example and to support and encourage actions and attitudes in the organization that prevent discrimination and harassment from occurring. He/She shall direct the investigation and respond to all complaints involving Department Heads, the Assistant City Manager(s), the City Attorney, and the Human Resources Director.

### **b. Human Resources Director**

The Human Resources Director shall be responsible for ensuring that all complaints of discrimination and harassment are investigated thoroughly and are responded to in a timely fashion. He/She shall direct the investigation and respond to all complaints involving City employees except as indicated in subsection (a) of this section.

The Human Resources Director shall assist, advise, or consult with employees, supervisors, and Department Heads regarding the harassment and discrimination policy, complaint procedures, and incidents.

### **c. Department Heads and Supervisors**

Department Heads and Supervisors are responsible for enforcing this policy and expected to take all steps necessary to set a positive example, prevent discrimination/harassment from occurring, and maintain a productive, non-hostile and non-discriminatory work environment.

Department Heads/Supervisors are expected to take all allegations of discrimination or harassment, including sexual harassment, seriously. Any Department Head or Supervisor who is aware of discrimination and/or harassment in the workplace and condones it by action or inaction or fails to report or investigate it will be subject to disciplinary action and may become legally liable.

Department Heads/Supervisors shall assist, advise, or consult with employees and the Human Resources Director regarding the harassment policy, complaint procedures, and incidents and shall assist in the investigation of complaints involving employee(s) in their departments. If a complaint is substantiated, the Department Head/Supervisor shall take appropriate corrective or disciplinary action.

### **d. Employees**

Employees are expected to treat each other with respect and consideration and shall not engage in actions or behaviors that violate or encourage violation of the City's discrimination and harassment policy.

Prompt, appropriate, direct action must be taken to stop incidents of discrimination or harassment. In some situations, a person may not realize that his/her behavior is unwelcome and/or offensive. Therefore, an offended employee is encouraged to clearly tell the offending individual that the behavior is unwelcome, offensive, and/or inappropriate and request that the conduct stop immediately. However, such action by the offended employee is not required prior to reporting the incident(s) or initiating a complaint.

An employee who believes that he/she has been subjected to any form of prohibited discrimination/harassment, or who witnesses another individual or group of individuals being subjected to such discrimination or harassment, is strongly encouraged to promptly report the incident(s) to a non-involved supervisor, Department Head, Human Resources Director, or City Manager, and/or file a complaint. Prompt action will help ensure that the problem is identified, investigated, and resolved as expeditiously as possible.

Employees are expected to fully cooperate with investigations of discrimination and harassment incident(s). Failure to cooperate in an investigation may result in disciplinary action.

#### **1102.6 Complaint Process**

An employee who feels that he/she has been a victim of discrimination or harassment may make a complaint, without fear of retaliation, according to procedures set forth in the City's Grievance Procedures. The complaint will be investigated promptly and thoroughly according to the guidelines of that policy; and if found to have merit, immediate steps will be taken to end the discrimination or harassment and appropriate disciplinary action will be taken.

#### **1102.7 Prohibition Against Retaliation**

Retaliation against any employee who alleges that he/she was the victim of discrimination and/or harassment or against any employee who provides information in the course of an investigation into claims of unlawful discrimination/harassment in the workplace is prohibited by this policy. Any employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy will not be subject to adverse employment consequences based upon such involvement or be the subject of retaliation.

Retaliation in any form against a complainant who exercises his/her right to make a complaint under this policy is strictly prohibited, and will itself be cause for appropriate disciplinary action. In addition, the failure by a department head or supervisor to promptly initiate disciplinary action after having been directed to do so by the City Manager or Human Resources Director will also be cause for appropriate disciplinary action.

#### **1102.8 False Accusations and Information**

Any employee who knowingly makes a false accusation of unlawful discrimination or harassment, or who knowingly provides false information in the course of an investigation of a complaint, may be subject to disciplinary action.

#### **1102.9 Confidentiality**

All complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved; however, confidentiality cannot be guaranteed.

#### **1102.10 Training**

The City will provide information and training to all employees regarding the discrimination and harassment policy, prevention of unlawful discrimination and harassment, and the procedure to be followed in filing complaints when unlawful discrimination/harassment has allegedly occurred. Training will be provided during the orientation process at the time of hire and at other regular intervals as determined by the City Manager and Human Resources Director.

Department Heads, supervisors, and other managerial staff will periodically receive specialized training to assist them in creating an environment of respect in the workplace and in recognizing, responding to, and resolving complaints of unlawful discrimination and harassment. New Department Heads, supervisors, or managers will receive specialized training within 60 days of their appointment.

All employees shall sign an acknowledgment as evidence of training after completing each training session.

### **Section 1103. Drug-Free Workplace – Drug & Alcohol Testing Procedures**

#### **1103.1 Purpose and Goal**

The City of Gaithersburg is committed to protecting the safety, health, and well being of all employees and individuals in the workplace. The City recognizes that alcohol abuse and drug use pose a significant threat to the City's goals. The City has established a drug-free workplace program that balances the respect for individuals with the need to maintain an alcohol- and drug-free environment.

#### **1103.2 Applicability**

Any individual who conducts business for the City, is applying for a position, or is conducting business on the City's property is covered by the drug-free workplace policy. The policy applies during all

working hours, whenever conducting business or representing the City, including while on call or on standby status.

### **1103.3 Prohibited Behavior**

It is a violation of the drug-free workplace policy to use, possess, or sell, except as required by an individual's job duties, or trade, alcohol, illegal drugs, or intoxicants.

### **1103.4 Drug and Alcohol Testing**

Each employee, as a condition of employment, will be required to participate in pre-employment, post-accident, reasonable suspicion, return-to-duty and follow-up testing upon selection or request of management. Safety sensitive employees, as defined in this policy, shall also be required to participate in random testing.

To ensure the accuracy and fairness of the testing program, all testing will be conducted according to Department of Health & Human Services (DHHS)/Substance Abuse and Mental Health Services Administration (SAMHSA) guidelines where applicable and will include a screening test; a confirmation test; the opportunity for a split sample; review by a Medical Review Officer, including the opportunity for employees who test positive to provide a legitimate medical explanation, such as a physician's prescription, for the positive result; and a documented chain of custody.

Any employee who tests positive will be immediately removed from duty and will be placed on administrative leave without pay for the remainder of the day.

An employee will be subject to the same consequences of a positive under the influence test if he/she refuses the screening or the test, adulterates or dilutes the specimen, substitutes the specimen with that from another person or sends an imposter, will not sign the required forms or refuses to cooperate in the testing process in such a way that prevents completion of the test.

All drug testing information will be maintained in separate confidential records. All information received by the City through the drug-free workplace program is confidential communication. Access to this information is limited to those who have a legitimate need to know in compliance with relevant laws and management policies.

### **1103.5 Substances to be Tested For**

When drug and alcohol screening is required under the provisions of the policy, a urinalysis test and evidential breath test will be given to detect the presence of the following substances:

- a. Alcohol (ethyl)
- b. Amphetamines (e.g., speed)
- c. Barbiturates (e.g., Amobarbital, Butabarbital, Phenobarbital, Secobarbital)
- d. Benzodiazepines
- e. Cocaine or cocaine metabolite
- f. Opiates (e.g., Codeine, Heroin, Morphine, Hydromorphone, Hydrocodone)
- g. Phencyclidine (PCP)
- h. THC (Marijuana)

### **1103.6 Reasons for Testing**

#### **a. Job Applicant Testing: General Standard**

All job applicants will be required to undergo a drug and alcohol test as part of a pre-placement physical examination prior to their final appointment. Failure to successfully pass this test shall constitute reasonable cause for elimination of that individual from any further consideration for employment.

#### **b. Employee Testing: Reasonable Suspicion**

In order to maintain a safe, secure, and productive environment for employees, the City may require a current employee to undergo drug and alcohol testing if there is reasonable suspicion that the

employee is under the influence of drugs or alcohol during work hours, or when the employee is acting in any capacity in which the employee may be representing the City. Circumstances which constitute a basis for determining reasonable suspicion may include, but are not limited to:

1. Specific, personal observation by employee's supervisor, division head, or Department Head concerning employee's job performance including but not limited to: increased tardiness or absenteeism, increased mistakes, missing deadlines, undependability, lying, overreacting to criticism, performance far below job expectations.
2. Specific, personal observation by employee's coworker, supervisor, Department Head, or other reliable and credible source of:
  - (a) Abnormal, erratic, unusual, or uncharacteristic behavior, including but not limited to: nervous, sleepy, confused, excited, fatigued, insulting, aggressive, belligerent, exaggerated politeness, combative, quarrelsome, uncooperative, and/or overly talkative.
  - (b) Physical symptoms of drug and/or alcohol use, including but not limited to: glassy, bloodshot, or watery eyes; breath or body odors; slurred, rambling, thick, or slow speech; unusual sweating, crying, tremors, or quick/erratic movements; poor coordination and/or reflexes such as stumbling, falling, staggering or needing support.
3. Direct observation of drug or alcohol use.

The supervisor of an employee suspected of being impaired by drugs or alcohol will immediately convene a meeting with the suspected employee to question the employee on his/her behavior. The supervisor with concurrence of his/her Department Head will then make a determination as to whether the employee is to return to the worksite or should be referred to the City's Human Resources Director, the Department Head, or the City Manager for further assessment and/or testing.

An employee suspected or determined to be under the influence of alcohol or drugs will be provided transportation to and from the testing facility. Additional arrangements will be made to ensure the employee's safety and well being, if deemed necessary.

Supervisors are required to detail in writing the special facts, symptoms, or observations which formed the basis for their determination that reasonable suspicion existed to warrant the testing of an employee. Copies of this documentation shall be forwarded to the appropriate Department Head and to the Human Resources Director. The facts underlying the determination of reasonable suspicion should be disclosed to the employee at the time the determination to refer the employee to testing is made.

c. **Employee Testing: Random**

The following employees who are in safety sensitive positions which could endanger public health, safety, and welfare will be subject to random drug and alcohol testing:

1. Employees who are required to operate City vehicles or heavy machinery and/or whose class specification indicates that they are required to maintain a valid driver's license.
2. Employees who are sworn police officers.
3. Employees to whom a City vehicle has been assigned.
4. Employees who receive, process, prepare and/or distribute cash or checks or handle credit card transactions as an essential part of their position.
5. Employees who work with children or youth.



6. The City Manager, City Attorney, Assistant City Managers, and Department Heads of all Departments established by the City Manager.

An employee who moves into a safety sensitive position from a position that is not safety sensitive will be notified in writing by the Department Head that he/she is subject to random drug and alcohol testing. No random testing will take place until at least 30 days after the employee receives the written notification.

The random selection process will take place as follows:

1. Each employee subject to testing will be assigned a number.
2. These numbers will be entered into a random selection.
3. The employee whose number is selected will be subject to random drug testing.
4. If the employee selected is absent from work, or if the Department Head does not send the employee for testing on the scheduled day, the employee will be rescheduled for testing at a later date.
5. If the test is cancelled by either the testing laboratory or the employer, the employee selected for testing will be placed back into the selection pool.

d. **Employee Testing: CDL**

This policy is required by the Omnibus Transportation Employee Testing Act of 1991 and the regulations promulgated thereto. (49 CFR Part 382) (the "federal regulations").

Effective January 1, 1995, the Department of Transportation (DOT) requires all employees that hold a CDL and could potentially drive a vehicle requiring a CDL be subjected to the DOT Drug and Alcohol Testing Regulations. This will include all employees while they are or could be expected to operate and inspect, service, attend, load, or unload a commercial vehicle. All City of Gaithersburg CDL required positions shall comply with the DOT testing regulations, which include testing 50 percent of CDL license holders per year.

e. **Employee Testing: Post-Accident**

Post-accident drug and alcohol testing will be conducted on an employee involved in an on-the-job accident (vehicular or otherwise) where the performance of the employee could have contributed to the accident as follows:

1. **Post-Accident: Vehicle**

The driver or operator of any City-owned or leased vehicle or other motorized equipment involved in an accident.

2. **Post-Accident: Non-Vehicle**

Any employee whose performance either contributed to any accident or injury or whose performance cannot be completely discounted as a contributing factor to an accident.

An employee failing to report an accident to his/her supervisor as soon as reasonably possible following the accident may be subject to disciplinary action.

Post-accident drug and alcohol testing should be administered as soon as possible following the accident. The employee's supervisor or Department Head will arrange for transporting the employee to the collection site. Nothing in this policy shall be construed to require the delay of necessary medical attention for injured people following an accident.

The alcohol test should be administered within two (2) hours, but no more than eight (8) hours, following the accident; and the drug test should be administered no later than thirty-two (32) hours following the accident. If the tests cannot be performed within the specified time frame, the reasons for failure to test should be documented by the supervisor or Department Head and given to the Human Resources Director.

No employee required to take a post accident alcohol test shall use alcohol for eight hours following the accident or until the alcohol test has been performed, whichever occurs first. A driver who is subject to post-accident testing shall remain readily available for the testing or shall be deemed by the City as having refused to submit to testing. An employee who refuses to be tested or avoids meeting the specified time limits will be considered as having a positive test result and will be subject to disciplinary action.

In the event that federal, state, or local officials conduct breath or blood tests for the use of alcohol and/or urine tests for the use of controlled substances following an accident, the City may request testing documentation from such agencies, and may require the employee to sign a release allowing the City to obtain such test results.

If the driver is so seriously injured that he/she cannot provide a sample of urine, breath, or saliva at the time of the accident, the City may require the driver to provide authorization for the City to obtain hospital records or other documents that would indicate the presence of controlled substances or alcohol in the driver's system at the time of the accident.

#### **1103.7 Testing Procedure – Employee Random & CDL**

Department Heads will be notified by confidential memo of those employees selected for testing. The memo will include the name of the employee(s) selected for testing, the date the test is to be done, directions to the testing site, and the test forms the employee will need to take with him/her to the testing site.

On the scheduled testing day, the Department Head will notify the employee he/she has been selected to be tested and instruct the employee to report to the testing facility within one hour following receipt of notification. The Department Head may send the employee for testing at any time during the employee's work day/shift; however, the employee should be sent for testing as early in the work day/shift as possible. If the employee selected is absent from work or if the department head does not send the employee for testing on the scheduled testing day, the employee will be rescheduled for testing at a later date. Refusal to take the test on the scheduled day may result in disciplinary action up to and including termination.

#### **1103.8 Prohibitions for Alcohol**

A driver may not report for duty or stay on safety sensitive duty if they:

- a. Have used alcohol in the past four (4) hours;
- b. Have an alcohol concentration of 0.02 or greater.

Employees are prohibited from using or being in possession of alcohol while on the job (unless it is being transported in cargo).

#### **1103.9 Prohibitions for Controlled Substances/Drugs**

Drivers who use drugs are considered medically unqualified to drive. A driver may not report for duty or stay on safety sensitive duty if they:

- a. Have used any controlled substance. The exception to this rule would be if a physician has prescribed the substance and has advised the driver that it does not interfere with the ability to safely operate a motor vehicle. In this case, the employee must notify his/her supervisor that he/she has such

a prescription and provide written proof that the physician will allow the employee to perform his/her duties at work.

- b. Have tested positive for a controlled substance.

### **1103.10 Alcohol Testing**

The process for alcohol testing must meet the standards set by the National Highway Traffic Safety Administration. Regulations require that an Evidential Breath Test (EBT) device be used for alcohol testing. The test must be administered by a Breath Alcohol Technician (BAT). The procedure will be as follows:

- a. The test will be done in an area that provides privacy and prevents unauthorized personnel from seeing or hearing the test results.
- b. The employee tested must provide approved picture identification (i.e., driver's license) to the BAT, and if requested, the BAT must provide identification to the employee.
- c. The federally approved Breath Alcohol Testing Form will be used. Refusal to sign the form will have the same result as the refusal to test.
- d. The test involves having the employee blow into the mouthpiece of the EBT for at least six seconds, or until an adequate amount of breath is obtained for testing.
- e. The BAT must show the employee the test results from the EBT. The results will then be given to the employer in a confidential manner.
- f. If the employee refuses to be tested or refuses to sign the form, the BAT will note this and notify the employer immediately. Refusal to test will have the same result as a positive test.
- g. If the employee is unable or states that he/she is unable to test, then:
  - 1. The BAT will make a second attempt to test.
  - 2. If the second attempt is unsuccessful, the BAT will note that a second attempt was made and then notify the employer immediately and
    - (a) The employer will require the employee to be evaluated by a physician (selected by the employer) concerning the medical ability for the employee to take the test;
    - (b) If the physician determines that the employee has a medical condition that will prevent the employee from testing, the physician will provide the employer with a written statement to that effect. The result cannot be regarded as a refusal to test.
  - 3. If the physician determines that there is no medical condition that would prevent the employee from testing, the results will have the same result as a refusal to take the test.

### **1103.11 Drug Testing**

Drug testing will be done by analyzing an employee's urine sample. This analysis will be done at a laboratory certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the Department of Health and Human Services (DHHS). The procedure will be as follows:

- a. Urine collection will be done in a location that provides privacy to the employee. The sample will be split into two separate containers, sealed, labeled, and sent to the drug testing laboratory. One sample will be tested and the second sample will be saved for future use as a confirmation test, if needed. Refusal to submit to a urine test will have the same results as testing positive.

b. A screening test will be performed on the primary sample. If this test is positive, a confirmation test will be performed for each drug identified in the screening test.

c. A medical review officer (MRO) will examine the test results. If the primary test sample is positive, the MRO will make reasonable effort to contact the employee to report the positive result and to determine if there is a medical reason for the positive test result. If the employee can document why the test result is positive, and if the MRO finds it is a legitimate medical use, the test may be reported as negative to the employer.

d. Upon notification of a positive test, the employee then has 72 hours to request a test of the second split sample. If so requested, the MRO will direct the laboratory, in writing, to send the split specimen to another DHHS-certified laboratory for the confirmation test.

e. If the analysis of the split sample or reanalysis of the first sample does not confirm the presence of a drug, the MRO will cancel the results of prior tests and report this to the employer and the employee.

f. The MRO will interpret all drug tests and give the results to the employer by any confidential means of communication. Within three days, the MRO will follow up with a signed written notification of the test results.

g. The MRO must show the employee the results from the test. The results will then be given to the employer in a confidential manner.

h. If the employee refuses to be tested or refuses to sign the form, the MRO will note this and notify the employer immediately. Refusal to test will have the same result as a positive test.

### **1103.12 Confirmation of Test Results**

The split sample of an employee or job applicant whose primary drug test yields a positive result will be tested to confirm the positive test results. An employee or job applicant whose primary alcohol test yields a positive result shall be given a second test. If the results from the initial test are different than the confirmation test, the confirmation test results will be used.

### **1103.13 Consequences of a Confirmed Positive Test Result**

One of the goals of the drug-free workplace program is to encourage employees to voluntarily seek help with alcohol and/or drug problems. If, however, an individual violates the policy, the consequences are serious.

#### **a. Applicants**

Job applicants will be denied employment with the City if their initial positive drug test results have been confirmed. Applicants shall be informed in writing by the City if they are rejected on the basis of confirmed positive drug test results.

#### **b. Probationary & Part-Time Employees**

If a probationary or part-time employee's positive test result has been confirmed, the City may terminate the employee or at the City's sole discretion, may refer probationary or part-time employee to mandatory participation in an approved counseling program. Any probationary or part-time employee referred to such a program will be subject to the same participation and retesting requirements as stated for classified employees and unclassified management employees, below.

#### **c. Classified Employees and Unclassified Management Employees**

If an employee's positive test result has been confirmed, the employee is subject to mandatory participation in an approved substance abuse counseling program. Any employee participating in such a counseling program will retain his or her position of employment with the City unless (1) the City learned of the positive test result as a consequence of a motor vehicle or work related accident or (2) an employee has had a prior positive test result. If condition (1) or (2) is applicable, the

City reserves the right to terminate the employee. In addition, the City reserves the right to take any other disciplinary action including, but not limited to, suspension and/or demotion. If additional tests result in a confirmed positive test, the employee is subject to immediate termination. An employee required to have rehabilitation requiring lost time from work will be required to use (in this order) accumulated annual leave, compensatory leave, and sick leave during this absence. Participation in the substance abuse program will be monitored by the Human Resources Director. All information regarding treatment will be held in the strictest confidence.

Follow-up testing will be unannounced, and at least six (6) tests must be conducted in the first 12 months once an individual tests positive. Follow-up testing may be extended for up to 60 months following return to duty. Subsequent positive tests will result in disciplinary action up to and including termination. Factors to be considered in determining the appropriate disciplinary response include the employee's work history, length of employment, current job performance, and the existence of past disciplinary actions. For all sworn police officers, any disciplinary action shall be conducted in accordance with the Law Enforcement Officer's Bill of Rights.

#### **1103.14 Appeals**

If disciplinary action is taken because of a positive test result, an eligible employee may file a grievance as set forth in Section 1700, Grievance Procedures.

#### **1103.15 Mandatory Referral to an Approved Counseling Program**

The City of Gaithersburg recognizes that alcohol and drug abuse and addiction are treatable illnesses. The City also realizes that early intervention and support improve the success of rehabilitation.

To support City employees, upon the first confirmed determination that an employee has a positive test for under the influence of drugs or alcohol, the City shall refer the employee to an approved counseling program for assessment, counseling, and rehabilitation unless the employee's drug or alcohol use has resulted in an accident serious enough to warrant dismissal. Participation in this counseling program is mandatory. Refusal to participate in mandatory counseling will result in disciplinary action up to and including termination. Disciplinary action based on a violation of the City's drug and alcohol policy is not automatically suspended by an employee's participation in an approved counseling program and may be imposed when warranted.

Voluntary participation in an approved counseling program prior to an under the influence confirmed test result is encouraged. An employee seeking participation in such a program shall contact the Human Resources Director who shall coordinate and oversee the participation. Any such contact will be held in the strictest of confidence by the Human Resources Director. No disciplinary action will be brought as a result of volunteering to participate in such a program. Employees who, prior to an under the influence test result, voluntarily identify themselves as drug or alcohol users and obtain counseling and rehabilitation through an approved counseling program shall not be disciplined for their drug and/or alcohol use if they thereafter refrain from violating the City's policy on drug and alcohol abuse. All employees, however, can be disciplined for any incidents resulting from their violation of the City's policy and drug and alcohol abuse or violation of the work rules. The Human Resources Director will provide information about approved employee counseling services, if requested by a City employee.

#### **1103.16 Return to Duty and Follow-Up Testing**

Following evaluation and treatment, if any in order to return-to-duty, the employee must submit to and successfully complete follow-up testing. Follow-up testing is separate from and in addition to the City's reasonable suspicion, post-accident, and random testing procedures. The schedule for follow-up testing shall be unannounced and in accordance with the instructions described above.

#### **1103.17 Confidentiality of Test Results**

All information from an employee's or applicant's drug and alcohol test is confidential and only those with a need to know are to be informed of test results. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the employee or applicant. Any person who inappropriately discloses confidential information is subject to disciplinary

action up to and including termination. The results of positive drug tests shall not be released until the results are confirmed. The records of unconfirmed positive test results and negative test results shall be destroyed by the testing laboratory.

#### **1103.18 Supervisor Training**

Supervisory personnel shall be trained in identifying drug and alcohol use among employees. The purpose of this training will be to help supervisors recognize the conduct and behavior giving rise to a reasonable suspicion of drug or alcohol use; identify employees who need counseling and employee assistance programs; be aware of those employees who pose an immediate safety threat; communicate City policy on drug and alcohol use; indicate available employee assistance resources; understand how they can deal with an employee suspected of drug or alcohol use; and communicate and take appropriate disciplinary action.

This training will consist of at least 60 minutes on recognizing alcohol misuse, and at least 60 minutes on recognizing controlled substances use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

#### **1103.19 Employee Education**

The City will conduct education/outreach of employees via:

- a. Discussion groups on drug abuse/City policy;
- b. Videotapes/pamphlets on drugs in the workplace;
- c. Communication of available employee assistance;
- d. Communication of available health benefits for drug/alcohol treatment.

#### **1103.20 Prior Notice of Testing Policy**

The City will provide written notice of its drug and alcohol testing policy to all employees. No testing will take place until at least 30 days after notice of the existence of this policy.

#### **1103.21 Consent**

Compliance with the City's Drug and Alcohol Testing Policy is a prerequisite to employment and a condition of continued employment for all City staff positions.

Before a drug and alcohol test is administered, job applicants will be asked to sign a consent form authorizing the test and permitting release of test results to those municipal officials with a need to know. Those municipal officials with a need to know include the City Manager, Assistant City Manager, City Attorney, Human Resources Director, and the employee's Department Head. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the City's drug testing policy. Employees and applicants may at the time of the test provide the Medical Review Officer a list of those medications that have been recently used. The list of medications, if provided, shall be sealed and held as confidential until there has been a positive test result. In the event of a confirmed positive test result, the list of medications shall only be disclosed to the Medical Review Officer who will determine whether the positive result was due to the lawful use of any of the listed medications. Also, employees and applicants may choose to provide to their supervisor or the Human Resources Director such a list after being notified of a confirmed positive result. The Human Resources Director will then provide this list to the Medical Review Officer.

##### **a. Refusal to Consent: Applicants**

A job applicant who refuses to consent to a drug and alcohol test will be denied employment with the City.

##### **b. Refusal to Consent: Employees**

An employee who refuses to consent to a drug and alcohol test is subject to disciplinary action up to and including termination. An employee, upon written request to the appropriate Department Head within three (3) days of his/her refusal, shall be entitled to a hearing prior to the City's decision that such refusal warrants disciplinary action. The reason(s) for the refusal shall be considered in determining the appropriate disciplinary action. The hearing shall be held in accordance with the

provisions of City of Gaithersburg Code. If disciplinary action is taken because of refusal to consent, an eligible employee may file a grievance as set forth in Section 1700, Grievance Procedures.

### **1103.22 Drug Free Workplace Requirements**

Each employee engaged in the performance of a federal grant shall be given a copy of the City's drug and alcohol policy. As a condition of employment under a federal grant, all employees will abide by the terms of this policy and the drug free workplace requirements of the federal grant and notify the City in writing of any conviction for a violation of a criminal drug statute occurring in the workplace no later than five days after such conviction.

The City will notify the appropriate grant agency in writing within ten calendar days after receiving a notice for violation of a criminal drug statute providing the person's title and grant identification number.

Within thirty calendar days upon receiving a notice for violation of a criminal drug statute, the City will follow the actions as noted in the Gaithersburg City Code.

### **Section 1104. Ethics**

Chapter 7A of the Gaithersburg City Code contains "Conflict of Interest" provisions which apply to all City employees, regardless of position. The purpose of these provisions is to ensure that City employees undertake their respective jobs without favoritism or partiality to any individual or business entity in the general public and are not engaging in improper activities under the law. The City Ethics Commission, appointed by the Mayor and City Council, processes and makes determinations concerning complaints filed by anyone alleging violations of the City's Ethics Ordinance.

The Conflict of Interest provisions of the Ethics Ordinance prohibit an employee from:

- a. Participating on behalf of the City in any matter which would, to their knowledge, have a direct financial impact on them, as distinguished from the public generally, their spouses or dependent children or business entities with which they are affiliated.
- b. Holding or acquiring interests of 5 percent or greater in any business that has or is negotiating contracts with the City where the contracts are in excess of \$2,500.
- c. Being employed by any business entity negotiating contracts in excess of \$2,500 with the City or which is regulated by their agency, except as exempted by the Ethics Commission.
- d. Holding any outside employment relationships that would directly impact their impartiality or independence of judgment with regard to their official capacities.
- e. Representing any parties, for contingent fees, before any City agency or department.
- f. Within one year following termination of City service, acting as compensated representatives of others in connection with any specific matters within their official responsibilities in which they participated substantially as a City employee.
- g. Soliciting any gift from any person or business entity.
- h. Accepting any gift from any person or business entity that has or is negotiating a contract with the City or is regulated by their agency, except where such gifts would not present a conflict of interest as determined by the Ethics Commission.
- i. Using the prestige of their position except to aid or benefit the public generally.
- i. Passing on confidential information acquired in their official City position for their own benefit or for the benefit of others.

k. While employed with the City or within one year following termination of City service, purchasing any property or equipment from the City, either directly or through a third party such as an auction house, unless the purchase is subject to prior written approval by the City Manager.

The Ethics Commission developed a "Conflict of Interest Statement" to educate employees regarding their duties and obligations as a City employee under the Ethics law. All employees are required to read and sign this Statement at the time of hire.

The City's Ethics Ordinance requires the City Manager, City Attorney, Assistant City Manager(s), and Department Heads to file a Financial Disclosure Statement annually, no later than January 31 of each calendar year, with the Ethics Commission. The Statement must disclose any gifts, the value of which is \$10 or more, received during the preceding calendar year from any person having a contract with the City or any person regulated by their agency. The Statement must identify the donor of the gift and its approximate value at the time of receipt.

For more information on the City's Ethics Ordinance, see Chapter 7A of the Gaithersburg City Code.

## **Section 1105. Information Technology Resources Use**

### **1105.1 Purpose/Overview**

The purpose of this policy is to set forth the guidelines and standards for use of the City's information technology resources, including but not limited to desktop computers, servers, networks, related equipment and software applications, supporting systems and the data transmitted on those systems, Internet services, Intranet services (), telephones, voice mail, electronic mail (email), facsimile machines, photocopiers, printers, and related office equipment and supplies.

The City of Gaithersburg maintains technological resources to facilitate operations and communications, to improve access to and exchange of information, to increase efficiency and productivity, to connect citizens to government, and to assist City employees in providing effective and high quality services to the public.

All employees of the City of Gaithersburg are subject to the provisions of this policy. Contractors of the City of Gaithersburg are not authorized any personal use of City technology unless it is specifically permitted by contract or other memoranda of agreement.

### **1105.2 Privacy and Confidentiality**

Information technology resources are the sole property of the City of Gaithersburg. The City reserves the right to inspect technology systems, including any and all files stored thereon, and monitor communications for improper use at any time without advance notice or consent. The use of technology resources is not necessarily secure, private, or anonymous.

Business telephone calls may be monitored or recorded for legitimate business purposes such as providing training, instruction, or protection against abusive calls.

### **1105.3 Regulations/Procedures**

Employees are authorized to use the City's information technology resources in accordance with the obligations and responsibilities specified below:

#### **a. Authorized Purposes for Use**

Employees shall use information technology resources for purposes related to their employment with the City and for the enhancement of their job related functions. Occasional and incidental personal use of the City of Gaithersburg's technology resources may be permitted, provided that such use does not:



1. Interfere with the performance, productivity, employment duties, or other obligations to the City, of the user, or any other City employee.

2. Interfere with the use of technology resources by the City.

3. Burden the City with anything more than *de minimis* additional costs, to be determined in the City's sole discretion. *De minimis* means a minimal amount as defined by Internal Revenue Service (IRS) regulations.

4. Include any activity that is prohibited under any City policy.

5. Damage the integrity or operability of the City's IT resources and/or systems.

b. **Authorized Access**

Employees shall keep server account identification and passwords confidential. Only those employees who have been authorized by a Department Head shall have access to City applications that contain confidential or sensitive information or data (such as addresses, phone numbers, customer purchase history, customer payment history, etc.). Under no circumstances shall an employee use such information or data for personal reasons or for any purpose other than carrying out defined job duties.

Employees are prohibited from accessing or attempting to access information technology resources for which they do not have explicit authorization by means of user accounts, valid passwords, file permissions, or other legitimate access and authentication methods. It is a violation of this policy to grant another individual access to any City accounts that have been authorized to an employee or to use another employee's authorized accounts, user ID's, or passwords.

c. **Prohibited Activities**

Certain use of City equipment is prohibited, including but not limited to:

1. Viewing, sending, soliciting, downloading, or storing material that is likely to be considered threatening, disruptive, defamatory, inflammatory, profane, obscene, pornographic, or sexually explicit; that could be construed as a harassment or disparagement of others based on their race, national origin, citizenship, ethnicity, ancestry, marital status, sex, sexual orientation, age, disability, religion, or political beliefs; that pertains to or advocates violence, illegal gambling, illegal weapons, or terrorist activities; that promotes unethical practices; or any activity prohibited by Federal or State law or City regulation or policy. The City reserves the right to determine whether any material or activity violates this prohibition. The incidental and unsolicited receipt of sexually explicit or extremist material, such as might be received through email, shall not constitute a violation of this section, provided that the material is promptly deleted and neither stored nor forwarded to other parties, provided that forwarding to and storing by the City's spam filter shall not be considered a violation of this policy.

2. Uploading or otherwise transferring out of the City's direct control any software licensed to the City or data owned or licensed by the City without explicit written authorization.

3. Loading software onto City equipment without the approval and guidance of a supervisor and the Information Technology Department. Software includes, but is not limited to, computer games, screen savers, chat programs, customized cursors, freeware, shareware, and non-City email programs.

3.5 The installation of hardware onto City computers, networks, phones, or office equipment. Hardware includes, but is not limited to, desktop computers, laptop computers, printers, disk storage devices, Random Access Memory (RAM), and monitoring devices.

4. Using sensitive or confidential data from City applications for any purpose other than carrying out defined job duties, and/or transmitting sensitive or confidential data to non-City parties including, but not limited to, citizens, contractors, organizations, and members of the press, without the permission of a Department Head.

5. Using technology for commercial purposes or in support of other "for profit" activities such as outside employment or business (for example, selling real estate, preparing and copying a newsletter, or preparing tax returns for a fee).

6. Using technology to raise funds for any outside activity or personal cause, to endorse any product or service, to participate in lobbying or prohibited partisan political activity (e.g., expressing opinions about candidates or distributing campaign literature), except for communication with elected officials in the course of regular job duties.

7. Acquiring, reproducing, transmitting, distributing, or using: any controlled information, including computer software and data, protected by copyright, trademark, privacy laws; other proprietary data or material with other intellectual property rights beyond fair use; or export-controlled software or data.

8. Using technology resources to post personal messages to external news groups, bulletin boards, or other public forums. Employees must not give the appearance that they are acting in an official capacity or that the City endorses or sanctions their personal activities or beliefs.

9. Repeatedly downloading or sending/storing large files via email. Allowable sizes can vary according to bandwidth and storage capabilities, to be determined in the City's sole discretion.

10. Creating, copying, or transmitting chain letters or other mass mailings, regardless of the subject matter.

11. Engaging in disruption or vandalism of technology resources, including but not limited to uploading, downloading, or creating computer viruses and/or in any other malicious attempt to harm or destroy technology equipment, materials, or the data of any other user.

12. Removing from City premises any City technology resources or equipment without the express permission of the Information Technology Director.

13. Making long distance phone calls, except in an emergency. Personal long distance phone calls should be made by using a personal calling card.

d. **Duty to Report**

Employees shall report promptly any security problem or misuse of any City system to their immediate supervisor or to the Information Technology Director.

**1105.4 Email Access on Mobile Communications Devices**

At the City's discretion, the City may provide access to the City email system via cellular telephones, Personal Digital Assistant (PDA) devices, etc. The use of personal (non-City) devices to access mail must first be approved by a Department Head.

In the event that any device is lost, users must contact the IT Department within 24 hours so that IT staff can disassociate the device from the email system. Additionally, the City reserves the right to utilize its remote management capabilities to electronically disable or remove data from the lost device. The City will do so without regard to the potential loss of personal data or third-party applications which may have been purchased by the device's user.

**1105.5 Closing of Accounts**

The City shall close an employee's accounts and terminate access to files, email, networks, and other technology resources when the individual's employment with the City ends, unless it is in the City's best interest to maintain that access. Access to a terminated employee's email and files may be provided to a replacement employee if it is in the City's best interest to do so.

### **1105.6 Violations**

Any employee who violates any provisions of this policy is subject to suspension or revocation of access privileges and/or disciplinary action up to and including termination of employment, civil litigation, and/or criminal prosecution for misuse of information technology resources. A violation of this policy shall be administered in accordance with Section 1400, Disciplinary Actions.

### **Section 1106. Political Activity**

No employee of the City may participate in political activity during working hours or while representing the City in an official capacity. An employee who is elected or appointed as Mayor or a member of the City Council of the City of Gaithersburg must resign his/her position with the City prior to taking office.

### **Section 1107. Secondary Employment**

The primary position held by a classified employee or unclassified management employee of the City shall take precedence over any other occupational interest of the employee. No classified employee or unclassified management employee of the City shall engage in any secondary position that (1) will cause or could cause a conflict of interest, or the appearance of a conflict of interest, with City employment and/or (2) interfere with or take precedence over the employee's performance of the duties and responsibilities of his/her primary position.

Any employee desiring to engage in secondary employment, including self-employment, shall request approval from his/her Department Head and the City Manager prior to accepting or engaging in such employment (or if already engaged in such employment, prior to continuing) by completing and gaining approval for the secondary employment via the Application for Secondary Employment.

If the Department Head and/or the City Manager determine that a conflict of interest exists, the request to engage in secondary employment will be denied. If the request is approved, such approval will remain in effect until (1) the employee ends the secondary employment voluntarily; (2) circumstances regarding the secondary employment change necessitating submission of a new Application; or (3) in the opinion of the Department Head, the secondary employment has resulted in a conflict of interest or is interfering with or taking precedence over the employee's performance of the duties and responsibilities of his/her primary position and approval of the secondary employment is rescinded.

Secondary Employment Applications will be maintained by the Human Resources Department in the employee's personnel file. It is the employee's responsibility to advise his/her Department Head and the Human Resources Department of changes in or termination of secondary employment.

Classified employees and unclassified management employees may occupy part-time positions with the City, provided the duties of the part-time position are significantly different from those of the primary position. The Human Resources Director or his/her designee shall verify that the employee's part-time employment is in a different capacity than the employee's primary employment (pursuant to Fair Labor Standards Act regulations). Requests will be approved by the Human Resources Director; requests denied will be returned to the Department Head, who will advise the employee.

Employees sustaining an injury arising out of non-City employment resulting in lost time from the City will not be covered by the City of Gaithersburg. Lost time due to such an injury will be charged to the employee's accrued paid leave.

Employees who hold secondary employment and fail to maintain a valid Secondary Employment Application will be subject to disciplinary action as set forth in Section 1400, Disciplinary Actions.

### **Section 1108. Smoking in the Workplace**

The City of Gaithersburg is committed to providing a safe and healthy environment for employees, citizens, and other users of City facilities. Accordingly, as provided in Chapter 18A of the

Gaithersburg City Code, "Smoking and Tobacco Products Placement," smoking is prohibited in all City-owned and City-leased offices, buildings, and vehicles.

Each facility has a designated outdoor area where smoking is permitted. The area is equipped with an appropriate receptacle for discarding spent tobacco, ashes, and cigarette butts. Smoking is prohibited discouraged at or near main entrances to City-owned or City-leased buildings where the public normally enters and exits.

As provided in Chapter 18A, Section 18A-3, of the City Code, smoking may be permitted in private, enclosed offices in City government workplaces when the door leading to another workplace is closed, or in workplace areas so large that smoking by one person would not affect another person (as designated by the City Manager or his designee). If a private, enclosed office is a shared workplace, smoking is permitted only with the consent of the nonsmokers and only if appropriate ventilation is provided.

Complaints concerning violations of this policy should be directed to the employee's immediate supervisor for resolution. Complaints concerning violation of this policy where the employee or person is not known should be reported to the supervisor of that office/area and that area should be monitored when possible. Violations of the policy shall be administered in accordance with Section 1400, Disciplinary Actions.

For more information on the City's Smoking Ordinance, see Chapter 18A of the Gaithersburg City Code.